Lebbey Sdn Bhd v Chong Wooi Leong & Anor and other applications

HIGH COURT (SHAH ALAM) — CIVIL SUIT NO 22-264 OF 1994 CONSOLIDATED WITH CIVIL SUIT NO 22-50-94 AND ORIGINATING SUMMONS NO 24-69 OF 1994
ABDUL WAHAB J
3 JULY 1997

Land Law *— Occupation — Equitable estoppel — State land occupied by defendants without consent or licence — Land subsequently alienated to plaintiff — Whether there was implied consent or acquiscence of state authority to defendants' occupation of the land — Whether defendants acquired any equitable rights to remain on the land — Whether plaintiff took the land subject to defendants' equity — Definition of state authority under the National Land Code 1965*

The plaintiff was the registered proprietor of a piece of land ('the land'). The land was previously owned by the Selangor State Authority which had approved the plaintiff's application for alienation of the land. At the time of the alienation, there were many houses built on the land occupied by squatter families. The plaintiff planned to develop the land and by its notice to quit demanded the occupiers ('the defendants') to vacate the land. The defendants refused to vacate the land and the plaintiff commenced proceedings against the defendants. The defendants argued that: (i) they had acquired a right in equity to be compensated; (ii) the plaintiff, taking the land with full knowledge of the defendants occupying the land, took the land subject to the defendants' equity; (iii) although the defendants had entered the state land without consent or licence, they had peaceful enjoyment and occupation without interference by the state authorities. It was argued that a district officer allowed them to rebuild their houses on the land after a fire and a committee of residents had applied for a temporary occupation licence based on promises by politicians that they would be given temporary occupation licence. It was argued that an equitable estoppel arose, and the plaintiff who succeded the state authority in title could not be entitled to possession until the equity of the defendants had been satisfied; and (iv) promissory estoppel arose from the acquiescence or implied consent of the state authority to the defendants' occupation of the land.

Held, allowing the plaintiff's application:

(1) The registered owner of any land is prima facie entitled to possession of it, and any person claiming a right of occupation against such registered owner, such as in the case of the defendants, bears the burden of proving such right on a balance of probabilities (see p 373E-F).

(2) The defendants' argument ignored the essential distinction between the term state authority as defined under the National

Land Code 1965 ('the Code') and state authorities in the ordinary sense. State authority under the Code is defined, for the purposes of the State of Selangor, as the Ruler. For practical purposes, this means the Ruler acting upon the recommendation of the Exco of the state. The state government, let alone any Minister, Exco member or politician has nothing to do with the proceedings under the Code, which recognizes only the state authority. The district officer is unknown to the Code. Therefore, the defendants not only entered the land without consent but had also remained thereon without the consent of the state authority. The knowledge or acquiescence of other state authorities or personalities is wholly irrelevant to the Code. The application of equitable principles and the doctrine of estoppel was therefore misconceived (see pp 374E–I and 375C); *Government of the State of Negeri Sembilan & Anor v Yap Chong Lan & Ors* [1984] 2 MLJ 123 followed.

(3) A person seeking remedy in equity must come with clean hands. It was clear that the defendants had been in breach of the Code punishable under s 425 thereof. The defendants could not be said to have come with clean hands. That the state authority had not acted against the defendants could not mean that the state authority had given consent. Such argument could not stand in the face of the clear provision that no title to state land shall be acquired by possession, unlawful occupation or occupation under any licence for any period whatsoever.

No evidence had been advanced that any of the defendants had made an application for a temporary occupation licence. Even if there was an application, the mere submission of an application could never amount to consent by the state authority to occupation until the approval or licence is issued since the Code makes no provision for any provisional occupation (see p 375D–G).

(4) There was no evidence that there was a promise made by the state authority or the plaintiff upon which the defendants had acted. The failure to prosecute under s 425, being non-action, was not by itself a promise. Acquiescence based on non-action, without more, similarly could not be a promise. Further, the relevant authority was at all times the state authority and the act of a district officer whose existence was alien to the Code could not bind the state authority. Thus, promissory estoppel did not arise. The defendants could not acquire equitable rights against the state authority in respect of their occupation of the land.

With the conclusion that the defendants had not acquired any equitable interest against the state authority, the title that the plaintiff obtained from the state authority was, prima facie, equally free of any equitable interest of the defendants unless there were such conditions imposed by the state authority. There

was no evidence adduced by the defendants or conceded by the plaintiff of such conditions (see pp 375I and 376A–C). A

Obiter:

Even in a case where a temporary occupation licence is issued, upon the end of the licence, there can be no claim in equity for compensation for structures and improvements made upon such land. The occupier makes such expenditures upon his own accord and risk (see p 375B). B

[Bahasa Malaysia summary

Plaintif adalah tuan punya berdaftar sebidang tanah ('tanah tersebut'). Tanah tersebut dahulunya dimiliki oleh Pihak Berkuasa Negeri Selangor yang telah meluluskan permohonan plaintif untuk pemberimilikan tanah tersebut. Pada masa pemberimilikan, banyak rumah didirikan atas tanah tersebut yang diduduki oleh keluarga setinggan. Plaintif ingin memajukan tanah tersebut dan melalui notis keluar mendesak penghuni ('defendan-defendan') supaya mengosongkan tanah tersebut. Defendan-defendan enggan mengosongkan tanah tersebut dan plaintif memulakan prosiding terhadap defendan-defendan. Defendan-defendan menghujahkan bahawa: (i) mereka telah memperolehi hak dalam ekuiti untuk diberi pampasan; (ii) plaintif, yang telah mengambil tanah tersebut dengan pengetahuan sepenuhnya tentang defendan-defendan yang menduduki tanah tersebut, telah mengambil tanah tersebut tertakluk kepada ekuiti defendan-defendan; (iii) walaupun defendan-defendan telah memasuki tanah negeri tanpa kebenaran atau izin, mereka telah menikmati keamanan dan pendudukan tanpa gangguan oleh pihak berkuasa negeri. Ia dihujahkan bahawa seorang pegawai daerah telah membenarkan mereka mendirikan rumah mereka semula atas tanah tersebut selepas suatu kebakaran dan sebuah jawatankuasa penduduk telah memohon untuk lesen pendudukan sementara berdasarkan janji oleh ahli-ahli politik bahawa mereka akan diberikan lesen pendudukan sementara. Ia dihujahkan bahawa suatu estopel ekuiti telah timbul, dan plaintif yang mewarisi hakmilik pihak berkuasa negeri tidak berhak mendapat milikan sehingga ekuiti defendan-defendan telah dipenuhi; dan (iv) estopel janji berbangkit daripada akuiesens atau kebenaran tersirat pihak berkuasa negeri kepada pendudukan penghuni atas tanah tersebut. C D E F G

Diputuskan, membenarkan permohonan plaintif: H

(1) Pemilik berdaftar mana-mana tanah adalah prima facie berhak kepada milikannya, dan sesiapa yang menuntut hak pendudukan terhadap pemilik berdaftar begitu, seperti dalam kes defendan-defendan, mempunyai beban membuktikan hak sedemikian atas imbangan kebarangkalian (lihat ms 373E–F). I

(2) Hujah defendan-defendan mengabaikan perbezaan asas di antara terma pihak berkuasa negeri seperti yang ditakrifkan di bawah Kanun Tanah Negara 1965 ('Kanun tersebut') dan pihak berkuasa

negeri dalam makna biasa. Pihak berkuasa negeri di bawah Kanun tersebut adalah ditakrifkan, untuk tujuan Negeri Selangor, sebagai Raja. Untuk tujuan praktikal, ini bermakna Raja yang bertindak atas syor Exco negeri. Kerajaan negeri, apatah lagi mana-mana Menteri, ahli Exco atau ahli politik tiada kena-mengena dengan prosiding di bawah Kanun tersebut, yang hanya mengiktiraf pihak berkuasa negeri. Pegawai daerah tidak dikenali kepada Kanun tersebut. Maka, defendan-defendan bukan sahaja telah memasuki tanah tersebut tanpa kebenaran tetapi juga telah menetap di sana tanpa kebenaran pihak berkuasa negeri. Pengetahuan atau akuiesens pihak berkuasa negeri atau personaliti lain adalah tidak relevan langsung kepada Kanun tersebut. Pemakaian prinsip ekuiti dan doktrin estopel dengan itu adalah salah tanggap (lihat ms 374E–I dan 375C); *Government of the State of Negeri Sembilan & Anor v Yap Chong Lan & Ors* [1984] 2 MLJ 123 diikut.

(3) Seseorang yang meminta remedi dalam ekuiti mestilah tidak bersalah ketika menghadapi mahkamah. Adalah jelas bahawa defendan-defendan telah melanggar Kanun tersebut yang boleh dihukum di bawah s 425. Defendan-defendan tidak boleh dikatakan tidak bersalah ketika menghadapi mahkamah. Hanya kerana pihak berkuasa negeri tidak bertindak terhadap defendan-defendan tidak bermakna bahawa pihak berkuasa negeri telah memberikan kebenaran. Hujah demikian tidak boleh dibiarkan memandangkan peruntukan jelas bahawa tiada hakmilik kepada tanah negeri boleh diperolehi melalui milikan, pendudukan yang menyalahi undang-undang atau pendudukan di bawah lesen untuk apa-apa jangkamasa.

Tiada keterangan telah dikemukakan bahawa mana-mana defendan-defendan telah membuat permohonan untuk lesen pendudukan sementara. Sekalipun terdapat permohonan begitu, hujah semata-mata atas permohonan tidak sama seperti kebenaran oleh pihak berkuasa negeri kepada pendudukan sehingga kelulusan atau lesen dikeluarkan memadangkan Kanun tersebut tidak membuat sebarang peruntukan untuk apa-apa pendudukan sementara (lihat ms 375D–G).

(4) Tiada keterangan bahawa terdapat janji yang dibuat oleh pihak berkuasa negeri atau plaintif atas mana defendan-defendan telah bertindak. Kegagalan untuk mendakwa di bawah s 425, yang merupakan tiada tindakan, tidak merupakan janji dengan sendirinya. Akuiesens berdasarkan tiada tindakan, tanpa lebih daripada itu, begitu juga tidak mungkin adalah janji. Seterusnya, pihak berkuasa yang relevan pada semua masa adalah pihak berkuasa negeri dan tindakan seorang pegawai daerah yang kewujudannya tidak dikenali oleh Kanun tersebut tidak boleh mengikat pihak berkuasa negeri. Justeru itu, estopel janji tidak berbangkit. Defendan-defendan tidak dapat memperolehi hak

ekuiti terhadap pihak berkuasa berkenaan dengan pendudukan mereka atas tanah tersebut. A

Dengan kesimpulan bahawa defendan-defendan tidak memperolehi apa-apa kepentingan ekuiti terhadap pihak berkuasa negeri, hakmilik yang didapatkan oleh plaintif daripada pihak berkuasa negeri adalah, prima facie, bebas daripada kepentingan ekuiti defendan-defendan melainkan terdapat syarat-syarat yang dikenakan oleh pihak berkuasa negeri. Tiada keterangan yang dikemukakan oleh defendan-defendan atau diakui oleh plaintif tentang syarat-syarat sedemikian (lihat ms 375I dan 376A–C). B

Obiter: C

Jikalau pun dalam kes di mana lesen pendudukan sementara dikeluarkan, apabila tamatnya lesen, tiada tuntutan dalam ekuiti boleh dibuat untuk pampasan untuk struktur dan pembaikan yang dijalankan atas tanah. Penduduk membuat perbelanjaan begitu mengikut kerelaan dan risiko sendiri (lihat ms 375B).] D

[*Editorial Note*: The defendants' appeal to the Court of Appeal vide Civil Appeal No B–02–407–97 was dismissed on 20 January 1998.]

Notes E

For cases on occupation, see 8 *Mallal's Digest* (4th Ed, 1996 Reissue) paras 2179–2180.

Cases referred to

Government of the State of Negeri Sembilan & Anor v Yap Chong Lan & Ors [1984] 2 MLJ 123 (folld) F
Lee Suat Hong v Teo Lye [1988] 2 MLJ 537 (refd)
Teh Bee v K Maruthamuthu [1977] 2 MLJ 7 (refd)
Walton Stores (Interstate) Pty Ltd v Maher (1988) 164 CLR 387 (refd)

Legislation referred to G

National Land Code 1965 ss 48, 73(3), 341, 425

VS Viswanathan and *Chan Yew Hooi* (*TH Su & Co*) for the plaintiff.
R Kesavan, *Ann Santiago* and *Yasmeen Mohd Shariff* (*ML Lum & Co* and *Mahani Hamid & Yasmeen*) for the defendants. H

Abdul Wahab J: The plaintiff is the registered proprietor of 31.66 acres of land comprised in HS(D) 34221 PT No 30186 Mukim of Ampang, District of Ulu Langat, Negeri Selangor ('the land'). The land was previously owned by the Selangor State Authority.

On 26 August 1992, the Majlis Mesyuarat Kerajaan approved the plaintiff's application for alienation of the land subject to the conditions set out in a letter dated 8 October 1992 by the Pejabat Daerah/Tanah Ulu I

Langat. The area to be alienated to the plaintiff was precisely defined when the Pejabat Daerah/Tanah Ulu Langat issued a supplementary letter dated 15 January 1993 with a survey plan. Qualified title to the land was issued to the plaintiff on 14 June 1993.

At the time of the alienation, there were many houses built on the land and many people were occupying these houses. The plaintiff negotiated with these occupiers on an ex-gratia basis to enable the plaintiff to develop the land to a mixed residential, industrial and commercial estate as soon as possible. The plaintiff offered three schemes of settlement to the occupiers on the land.

Most squatter families have accepted the plaintiff's offer and have vacated their respective units. The plaintiff demanded the remaining occupiers to vacate the land and the last demand was made by a notice to quit dated 17 January 1994.

As the remaining occupiers refused to vacate the land, the plaintiff commenced Civil Suit No 22–50–94 against those defendants whose names were known to the plaintiff. In addition to Civil Suit No 22–50–94, legal action was also commenced by the plaintiff by way of an Originating Summons No 24–69–94 against those occupiers on the land whose names were not known to the plaintiff. A total of 24 persons defended the plaintiff's originating summons and a further 11 person indicated their intention to be joined as defendants.

The registered owner of any land is prima facie entitled to possession of it, and any person claiming a right of occupation against such registered owner, such as in the case of the defendants, bears the burden of proving such right on a balance of probabilities.

The argument put up on behalf of the defendants is in two stages. Firstly, that the defendants have acquired a right in equity to be compensated; and secondly, that the plaintiff, taking the land with full knowledge of the defendants occupying the land, therefore becomes subject to that right. In other words, the plaintiff takes the land subject to the defendants' equity.

It was submitted that the state authorities, knowing full well there were people in occupation on the land, took the easy way out by passing on to the plaintiff its obligations in respect of the defendants' equity.

It was submitted that although the defendants had entered upon the land in 1981 without the consent or licence, and the land was state land, the defendants had peaceful enjoyment and occupation of the land without interference of the state authoritities. In fact, many of the defendants in occupation of the land had access to piped water, electricity and even a surau. Indeed, after a fire in 1991, the district offficer allowed the affected defendants to rebuild their houses. At election time politicians came and promised that they would be given temporary occupation licence. As a result, in 1991 a committee of residents had applied for a temporary occupation licence. Therefore, it is argued, an equitable estoppel arose;

and the plaintiff, who succeeds the state authority in title, cannot be entitled to possession until the equity of the defendants has been satisfied.

Counsel cited the case *Lee Suat Hong v Teo Lye* [1988] 2 MLJ 537 (CA) in support of the proposition that the defendants have acquired an equity by acquiescence which must be satisfied before the plaintiff can be entitled to possession. Counsel argued that although *Government of the State of Negeri Sembilan & Anor v Yap Chong Lan & Ors* [1984] 2 MLJ 123 (FC) had held that the doctrine of estoppel cannot be established against the state authority, that decision was flawed because the court failed to consider or distinguish between a challenge to the legal title and a claim based on equitable or promissory estoppel for just compensation arising from the acquiescence or implied consent of the state authority to the defendants' occupation of the land. The defendants' claim is based on the second aspect.

In my view, *Lee Suat Hong v Teo Lye* is of no assistance, being a case between two private parties. Of the decision of *Yap Chong Lan,* it cannot be said of the Federal Court decision that it is flawed. The learned judge had in fact referred to the failure to argue the point (see p 127E–I), and dealt with in some detail as to the application of equitable estoppel in public law (see p 128I).

The defendants' argument ignores the essential distinction between the term state authority as defined under the National Land Code 1965 ('the Code') and state authorities in the ordinary sense. State authority under the Code is defined, for the purposes of the State of Selangor, as the Ruler. For practical purposes, this means the Ruler acting upon the recommendation of the Exco of the state. In *Yap Chong Lan,* the Federal Court held (at p 128):

> It is necessary in the first instance to consider the authority of the collector to bind the state authority in making the commitment alleged by the respondents. He had no authority in our view to purport to commit the state authority even if he did give the assurances alleged (*Sidek bin Hj Muhamed & Ors v The Government of the State of Perak & Ors* [1982] 1 MLJ 313 at p 314).

Even the state government, let alone any Minister, Exco member or politician, elected or not, as such, has nothing to do with these proceedings under the Code, which recognizes only the state authority. In this case, it is alleged that the district officer allowed certain fire victims to rebuild their houses. The pleadings in so doing, failed to aver even to the land administrator or collector who might have some connection, but only to the district officer who is unknown to the Code.

In other words, the defendants have not only come onto the land without consent but have also remained thereon without the consent of the state authority. The knowledge or acquiescence of other state authorities or personalities is wholly irrelevant to the Code.

Further along in that decision, the Federal Court in no uncertain terms said (at p 128):

A ... There can be no intervention by equity in the face of the specific legislative provisions of the Code (*Pemungut Hasil Tanah, Kota Tinggi v United Malayan Banking Corp Bhd* [1981] 2 MLJ 264).

Thus, even in a case where a temporary occupation licence is issued, upon the end of the licence, there can be no claim in equity for compensation for B structures and improvements made upon such land. The occupier makes such expenditures upon his own accord and risk.

To conclude otherwise would, to borrow the language of Abdoolcader FJ in *Yap Chong Lan*, 'establish against the state authority rights in respect of state land which it is prevented from creating other than in the prescribed C manner'. The application of equitable principles and the doctrine of estoppel is therefore misconceived.

There is also another reason. A person seeking remedy in equity must come with clean hands. It is clear that the defendants have been in breach of the Code punishable under s 425 thereof. The defendants cannot be said to have come with clean hands. That the state authority had D not acted against the defendants cannot mean that the state authority has given consent. Such argument cannot stand in the face of the clear provision that no title to state land shall be acquired by possession, unlawful occupation or occupation under any licence for any period whatsoever: s 48. Adverse possession cannot become a bar to the recovery of possession E by the proprietor or any person having an interest therein: s 341.

The Code specified the procedure to obtain title or temporary occupation licence, and no evidence has been advanced that any of the defendants in this case had made either application. Mention is made by a witness that an application for a temporary occupation licence was made by a committee in 1991, but no evidence of the application, and in respect F of whom, has been advanced.

Even if there is an application and that application was made on behalf of each and every one of the defendants in this case, the mere submission of an application can never amount to consent by the state authority to occupation until the approval or licence is issued since the G Code makes no provision for any provisional occupation until approval or licence is issued. In this regard, s 73(3) gave the true principle under the Code: alienation takes effect only upon registration notwithstanding earlier approval. That the registration means everything in the Torrens system has been emphasized by the Federal Court in *Teh Bee v K Maruthamuthu* H [1977] 2 MLJ 7 at p 12. Mere approval itself is therefore insufficient. By the same token, in the case of temporary occupation licences, the right to occupy arises only when the license is issued.

Counsel for the defendants have also sought to argue on the basis of promissory estoppel. I shall deal with it briefly. Regardless of whether promissory estoppel may be used as a shield or as a sword (*Walton Stores I (Interstate) Pty Ltd v Maher* (1988) 164 CLR 387), the first question is always whether there was a promise made upon which the defendants have acted (see *Lee Suat Hong v Teo Lye*). There is no evidence of any promise by the state authority or by the plaintiff. That being the case, there is no

purpose to consider the question further in this case. The failure to prosecute under s 425, being non-action, is not by itself a promise. Acquiescence based on the argument of non-action, without more, similarly cannot be a promise. With regard to the argument that the district officer allowed the fire victims to rebuild their houses on the land, *Yap Chong Lan* would provide a complete answer. The relevant authority is at all times the state authority, and not even the act of the collector, let alone a district officer whose existence is alien to the Code, can bind the state authority.

I find therefore that the defendants cannot acquire equitable rights against the state authority in respect of their occupation of the land.

With the conclusion that the defendants have not acquired any equitable interest against the state authority, the title that the plaintiff obtained from the state authority is, prima facie, equally free of any equitable interest of the defendants unless there are such conditions imposed by the state authority. Again there is no evidence adduced by the defendants or conceded by the plaintiff of such conditions.

It was argued that the state authorities took the easy way out, and that the state authorities intended the plaintiff to assume the state authority's obligations. I think the argument is wholly misconceived. It cannot stand where the state authority itself has, in law, no obligation or liability to settle with the defendants. There is no evidence adduced in this case by the defendants of any condition imposed by the state authority to settle any matter with the defendants. In not imposing any condition, the state authority was entirely legally correct as it had no legal obligation to the defendants who are squatters simpliciter.

The plaintiff upon receiving title had taken steps to develop the land and sought to remove the squatters from the land. There is no evidence that the plaintiff consented to or acquiesced to the defendants remaining upon the land. Indeed the evidence point to the contrary.

Cases of this nature always carry a heavy emotional burden. It is not unnatural to develop an emotional attachment to an abode, no matter how humble, that one has lived in for some time. Secondly, the persons usually involved to be evicted are more often than not from the lower economic scale who had moved in onto state land without licence or title. The court is not unknowing of these socio-economic issues. But the issues, by themselves, do not create legal or equitable rights. No one can fail to appreciate that one cannot obtain or acquire rights merely by moving in. It would encourage and reward the brazen to move in on every piece of empty state land, while those who follow the provisions of the Code will be disadvantaged. Such a position is wholly indefensible. The greater good of the society is better served by a orderly adherence to the provisions of the law, in this case, under the Code. The plaintiffs having duly obtained clear registered title to the land, it would also be unjust for the court to be generous to the defendants with the rights of the plaintiff. To do so would be lending the assistance of the court to those who by unlawful occupation of the land hold to ransom registered owners unless they are paid off.

A All these lead to the inescapable conclusion that the defendants have not at any time acquired any equitable interest or right either against the land or the plaintiff, and the plaintiff's applications must in the circumstances of this case be allowed, the detailed terms of which are to be settled, if necessary, by further application.

B *Order accordingly.*

Reported by Jafisah Jaafar

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